

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Visiplex, Inc.)
Licensee of Stations WPJU326 and WQBF524)

and)

Visiplex Technologies, Inc.)
Former Licensee of Stations WPJU326 and)
WQBF524)

File No.: EB-06-SE-181

NAL/Acct. No.: 200932100019

FRNs: 0017200742; 0009865411

ORDER

Adopted: April 12, 2013

Released: April 12, 2013

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission), Visiplex, Inc. (Visiplex), and Visiplex Technologies, Inc. (Visiplex Technologies). The Consent Decree resolves and terminates the Bureau's investigation into possible violations of Section 301 of the Communications Act of 1934, as amended (Act)¹ and Section 1.903(a) of the Commission's rules (Rules)² regarding the operation of wireless synchronized clock systems under stations WPJU326 and WQBF524.

2. The Bureau, Visiplex, and Visiplex Technologies have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Visiplex and Visiplex Technologies possess the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. Ben Agam, General Manager, Visiplex, Inc., 100 N. Fairway Drive, Suite 120, Vernon Hills, IL 60061, Mr. Sam Agam, President, Visiplex Technologies, Inc., 111 Deer Lake Road, Suite 120, Deerfield, IL 60015, and to Michael Lauzon, Esq., Law Offices of Michael Lauzon, Esq., Counsel for Visiplex, Inc. and Visiplex Technologies, Inc., 645 S. Hough Street, Barrington, IL 60010.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

³ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

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Visiplex Technologies, Inc.)	
Former Licensee of Stations WPJU326 and)	
WQBF524)	
)	

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission, Visiplex, Inc., licensee of Industrial/Business Pool Private Land Mobile Radio Service stations WPJU326 and WQBF524, and Visiplex Technologies, Inc., former licensee of stations WPJU326 and WQBF524,¹ by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 301 of the Communications Act of 1934, as amended,² and Section 1.903(a) of the Commission's rules³ regarding the operation of wireless synchronized clock systems under stations WPJU326 and WQBF524.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

¹ Visiplex Technologies, Inc. assigned the licenses of stations WPJU326 and WQBF524 to Visiplex, Inc. on March 13, 2008, and April 15, 2008, respectively. *See* File Nos. 0003358356; 0003381924.

² 47 U.S.C. § 301.

³ 47 C.F.R. § 1.903(a).

- (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which the Companies are subject by virtue of their business activities, including but not limited to, the Licensing Rules.
- (f) “Companies” means, collectively, Visiplex, Inc. and Visiplex Technologies.
- (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
- (h) “Covered Employees” means all employees and agents of the Companies who perform duties, or supervise, oversee, or manage the performance of duties, relating to the Companies’ responsibilities under the Licensing Rules.
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Investigation” means the investigation commenced by the Bureau’s August 15, 2007, letter of inquiry⁴ regarding whether Visiplex Technologies operated wireless synchronized clock systems in a manner inconsistent with the terms of the Licenses, which culminated in the issuance of the *NAL&O*.
- (k) “Licenses” means the Commission-issued licenses for stations WPJU326 and WBQF524, collectively.
- (l) “Licensing Rules” means Section 301 of the Act, Sections 1.903(a) and 90.35 of the Rules,⁵ and other Communications Laws governing the use or operation of Private Land Mobile Radio Service stations.
- (m) “*NAL&O*” means the *Notice of Apparent Liability for Forfeiture and Order* issued by the Bureau to Visiplex, Inc. on January 2, 2009.⁶
- (n) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by the Companies to implement the Compliance Plan.
- (o) “Parties” means Visiplex, Inc., Visiplex Technologies, and the Bureau, each of which is a “Party.”

⁴ See Letter from Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Sam Agam, President, Visiplex Technologies, Inc. (Aug. 15, 2007) (on file in EB-06-SE-181) (August 2007 LOI).

⁵ 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a), 90.35.

⁶ *Visiplex, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 1 (Enf. Bur. 2009).

- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Visiplex, Inc.” means Visiplex, Inc. and its predecessors-in-interest and successors-in-interest.
- (r) “Visiplex Technologies” means Visiplex Technologies, Inc. and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Pursuant to Section 301 of the Act and Section 1.903(a) of the Rules, the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station is prohibited except under, and in accordance with, a Commission-granted authorization.⁷ Section 90.35(c) of the Rules sets forth the specific limitations applicable to Industrial/Business Pool Private Land Mobile Radio Service authorizations based on the assigned frequency.⁸

3. On August 15, 2007, the Bureau issued a letter of inquiry to Visiplex Technologies, directing Visiplex Technologies to submit a sworn written response to a series of questions relating to its operation of wireless synchronized clock systems under the Licenses.⁹ Visiplex Technologies responded to the August 2007 LOI on September 14, 2007.¹⁰ On February 25, 2008, the Bureau issued a second letter of inquiry to Visiplex Technologies.¹¹ Visiplex Technologies responded to the February 2008 LOI on March 18, 2008.¹² On March 13, 2008, the Commission granted its consent to the assignment of the license of station WPJU326 from Visiplex Technologies to Visiplex, Inc., and on April 15, 2008, the Commission granted its consent to the assignment of the license of station WQBF524 from Visiplex Technologies to Visiplex, Inc.¹³ The conduct giving rise to the investigation apparently took place prior to the assignment of the Licenses from Visiplex Technologies to Visiplex, Inc.

4. On January 2, 2009, the Bureau issued the *NAL&O* to Visiplex, Inc.¹⁴ In the *NAL&O*, the Bureau found that the Companies apparently willfully and repeatedly violated Section 301 of the Act¹⁵ and Section 1.903(a) of the Rules¹⁶ by operating stations WPJU326 and WQBF524 in a manner

⁷ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

⁸ 47 C.F.R. § 90.35(c).

⁹ See August 2007 LOI.

¹⁰ See Letter from David S. Grosky, Vice President of Legal Affairs, Visiplex Technologies, Inc., to Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 14, 2007) (on file in EB-06-SE-181).

¹¹ See Letter from Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Sam Agam, President, Visiplex Technologies, Inc. (Feb. 25, 2008) (on file in EB-06-SE-181) (February 2008 LOI).

¹² See Letter from David S. Grosky, V.P. of Legal Affairs, Visiplex Technologies, Inc., to Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 18, 2008) (on file in EB-06-SE-181).

¹³ See File Nos. 0003358356; 0003381924.

¹⁴ See *NAL&O*, 24 FCC Rcd 1.

¹⁵ 47 U.S.C. § 301.

¹⁶ 47 C.F.R. § 1.903(a).

inconsistent with the terms of the authorizations.¹⁷ On January 27, 2009, Visiplex, Inc. and Visiplex Technologies filed separate responses to the *NAL&O*, asserting among other things, that the Companies are separate and distinct legal entities.¹⁸ The Parties entered into a tolling agreement to toll the applicable statute of limitations.¹⁹

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** The Companies agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Companies agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against the Companies concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Companies with respect to their basic qualifications, including their character qualifications, to be Commission licensees or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Visiplex, Inc. shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below.²⁰ The Compliance Officer

¹⁷ See *NAL&O*, 24 FCC Rcd at 2–3, para. 5.

¹⁸ See Visiplex, Inc.'s Statement in Response to the FCC's Notice of Apparent Liability for Forfeiture and Order Released January 2, 2009 at 1 (Jan. 27, 2009) (on file in EB-06-SE-181); Visiplex Technologies, Inc.'s Statement in Response to the FCC's Notice of Apparent Liability for Forfeiture and Order Released January 2, 2009 at 2 (Jan. 27, 2009) (on file in EB-06-SE-181).

¹⁹ See Tolling Agreement, File No. EB-06-SE-181, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Michael Lauzon, Esq., Counsel for Visiplex Technologies, Inc. and Visiplex, Inc. (Jan. 15, 2013).

²⁰ If at any time during the term of this Consent Decree, Visiplex Technologies acquires or otherwise obtains any wireless FCC authorizations, including the Licenses, Visiplex Technologies shall become subject to the terms and conditions of paragraphs 9 through 13 of this Consent Decree. In such event, Visiplex Technologies agrees that it (continued . . .)

shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Visiplex, Inc. complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Licensing Rules prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Visiplex, Inc. agrees that within sixty (60) calendar days after the Effective Date, it shall develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Licensing Rules, Visiplex, Inc. shall implement the following procedures:

- (a) **Operating Procedures on Licensing Rules.** Within sixty (60) calendar days after the Effective Date, Visiplex, Inc. shall establish Operating Procedures that all Covered Employees must follow to help ensure Visiplex, Inc.'s compliance with the Licensing Rules. Visiplex, Inc.'s Operating Procedures shall include internal procedures and policies specifically designed to ensure that Visiplex, Inc.'s operations under its FCC authorizations, including the Licenses, are consistent with the terms of its authorizations, including the limitations set forth in Section 90.35(c) of the Rules.²¹
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Visiplex Inc.'s compliance with the Licensing Rules. Visiplex, Inc. shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Visiplex, Inc. shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Visiplex, Inc. shall establish and implement a Compliance Training Program on compliance with the Licensing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Visiplex, Inc.'s obligation to report any noncompliance with the Licensing Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Visiplex, Inc. shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

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shall designate a Compliance Officer in accordance with paragraph 9, and implement the Compliance Plan described in paragraph 10 prior to acquiring or otherwise obtaining such wireless FCC authorizations.

²¹ 47 C.F.R. § 90.35(c).

11. **Reporting Noncompliance.** Visiplex, Inc. shall report any noncompliance with the Licensing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after the discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Visiplex, Inc. has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Visiplex, Inc. has taken or will take to prevent the recurrence of any such noncompliance. All such reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, DC 20554, with a copy submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Daudeline Meme at Daudeline.Meme@fcc.gov.

12. **Compliance Reports.** Visiplex, Inc. shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Visiplex, Inc.'s efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Licensing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Visiplex, Inc., stating that the Compliance Officer has personal knowledge that Visiplex, Inc. (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 11 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules²² and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Visiplex, Inc., shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Visiplex, Inc. has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Visiplex, Inc. has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, DC 20554, with a copy submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Daudeline Meme at Daudeline.Meme@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 9 through 12 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

²² *Id.* § 1.16.

14. **Voluntary Contribution.** The Companies agree to make a single voluntary contribution to the United States Treasury in the amount of four thousand dollars (\$4,000) (Voluntary Contribution) within thirty (30) calendar days after the Effective Date. The Companies are jointly and severally liable for the payment of the Voluntary Contribution. The Companies shall send electronic notification of payment to Nissa Laughner at Nissa.Laughner@fcc.gov, Daudeline Meme at Daudeline.Meme@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Waivers.** The Companies waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. The Companies shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Companies nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and the Companies shall waive any statutory right to a trial *de novo*. The Companies hereby agree to waive any claims they might have under the Equal Access to Justice Act²⁴ relating to the matters addressed in this Consent Decree.

16. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501–1.1530.

17. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Companies do not expressly consent), that provision will be superseded by such Rule or Commission order.

18. **Successors and Assigns.** The Companies agree that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

19. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute an adjudication on the merits, or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

20. **Modifications.** This Consent Decree cannot be modified without the advance written consent of the Parties.

21. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

22. **Authorized Representative.** The individual signing this Consent Decree on behalf of Visiplex, Inc. represents and warrants that he is authorized by Visiplex, Inc. to execute this Consent Decree and to bind Visiplex, Inc. to the obligations set forth herein. The individual signing this Consent Decree on behalf of Visiplex Technologies represents and warrants that he is authorized by Visiplex Technologies to execute this Consent Decree and to bind Visiplex Technologies to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

23. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

John D. Poutasse
Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Sam Agam
President
Visiplex Technologies, Inc.

Date

Ben Agam
General Manager
Visiplex, Inc.

Date